

these questions have become academic and the cross-appeal must be dismissed on that account.

With regard to costs, the respondents must pay to the appellants their costs of the appeal to this Board and in the Court of Appeal. Having regard to all the circumstances, their Lordships make no order as to the costs of the cross-appeal.

Appeal allowed; cross-appeal dismissed.

Solicitors: *Herbert Oppenheimer, Nathan & Vandyk; Chyde & Co.*

A SINGAPORE REPORTS

THE "SUHAILI 5201" SING KOON SENG SHIPBUILDING & ENGINEERING PTE. LTD. v. THE "SUHAILI 5201" (OWNERS AND OTHER PERSONS INTERESTED IN)

[C.A. (Wee Chong Jin C.J., Sinnathuray & Thean JJ.)
October 9, 1987]

[Singapore — Civil Appeal No. 81 of 1986]

C *Shipping — Claim against owners and others interested in ship — Arrest of ship — Amendments of claim by plaintiffs — Security for release — Plaintiffs insist on payment of money into court — Offer of bank guarantee by defendants — Whether court has jurisdiction to cancel or vary guarantee — Amount of security.*

D The main issue in this appeal is whether the guarantee provided by the respondents (defendants in the High Court) in the sum of \$1,584,530.74 for the release of the vessel "Suhaili 5201" arrested by the appellants should be cancelled or otherwise varied. The facts, complicated by the amendments made to the statement of claim by the appellants (plaintiffs in the High Court), are as follows. On July 1, 1986, the appellants commenced these proceedings against the respondents, claiming a declaration that they were entitled to their possessory lien of the "Suhaili 5201" (which they subsequently abandoned) and the sum of \$1,048,511.77 in respect of modification carried out to the vessel at the respondents' request. The appellants arrested the vessel on the same day. For the release of the vessel, the respondents offered a bank guarantee of \$1,584,530.74 but the appellants insisted on payment of the money into court. On July 11, 1986, the respondents obtained an order of court for the release of the "Suhaili 5201" upon furnishing a bank guarantee for \$1,584,530.74, which they did on July 17, 1986, whereupon the vessel was released the following day. On July 21, 1986, the appellants filed their statement of claim in which they reduced their claim from \$1,048,511.77 in the general indorsement to \$1,000,358.62, which was later increased to \$1,050,358.62 in their amended statement of claim.

H In the High Court, counsel for the appellants argued that the court had no jurisdiction to reduce or cancel the guarantee as it amounted to a private arrangement. Counsel informed the court that the figures in the amended statement of claim were wrong and that the appellants were reducing their claim from \$1,050,358.62 to \$669,552.30, being the outstanding balance due to them from the respondents for work done on two ships, the "Suhaili 5201" and the "Sirocco." The learned judge held that the court had jurisdiction to vary the amount of the guarantee. He deducted the total sum of \$686,558.23 which exceeded the appellants' claim of \$669,552.30. He accordingly cancelled the guarantee. Being dissatisfied with the decision of the learned judge, the appellants appealed to the Court of Appeal.

I Held, allowing the appeal: (1) the appellants were entitled to security in respect of \$169,552.30 (being the balance of \$669,552.30 less \$500,000.00 which was not payable at the time of issue of the writ) plus interest and costs;

(2) the appeal was allowed, order of the High Court set aside, and the amount of security furnished by the respondents reduced to \$230,000.00;

(3) the respondents to pay half the costs of the appeal. Costs of hearing before the High Court be costs in the cause.

Cases referred to:

- (1) *Cargill v. Bower* (1878) 10 Ch.D. 502.
- (2) *Lewis v. Durnford* (1907) 24 T.L.R. 64.
- (3) *The Moschanthy* [1971] 1 Lloyd's Rep. 37.
- (4) *The Hoe Lee* [1970] 1 M.L.J. 45.
- (5) *The Alletta* [1974] 1 Lloyd's Rep. 40.
- (6) *The Ling Yung* [1984] 2 M.L.J. 217.
- (7) *The Polo II* [1977] 2 Lloyd's Rep. 115.
- (8) *The Tergeste* [1903] P. 26.
- (9) *Sheik Mahomed Jan v. Mushi Ganga Bishun Singh* (1910) L.R. 37 I.A. 80.

HIGH COURT.

Mark Looi for the plaintiffs.

P. Suppiah for the defendants.

P. Coomaraswamy J.: On July 1, 1986, the plaintiffs commenced an admiralty action against the owners and others interested in the vessel "Suhaili 5201" ("Suhaili"). Their indorsement on the writ reads:

"The plaintiffs claim:

- (1) A declaration that they are entitled to their possessory lien of the vessel, 'Suhaili 5201';
- (2) The sum of \$1,048,511.77 in respect of modifications carried out to the vessel, 'Suhaili 5201', at the request of the defendants, their servants or agents."

The affidavit leading to the warrant for arrest of the "Suhaili" sworn by Mr. Mark Looi, the advocate and solicitor for the plaintiffs, was filed the same day. He swore that the plaintiffs' claim was for \$1,048,511.77 being "the balance due and owing for repairs carried to the "Suhaili" during March and June 1986." He further swore that the property to be arrested is the "Suhaili" and is the vessel in connection with which the claim in this action arose. This averment is mandatory under RSC Order 70 rule 4(7)(a).

It may here be noted that the claim indorsed on the writ, sworn to on the plaintiffs' behalf by their solicitor and wholly constituting the basis for the arrest of the vessel, exclusively related to the "Suhaili." There is no mention of any "sister ship" or of any claim in respect of the construction, repair or equipment of any ship other than the "Suhaili." Further, if there was such a claim, not only was the indorsement of claim defective

A but RSC Order 70 rule 4(7)(a) was not complied with. This rule in effect provides that in sister ship claims (i.e. those under section 4(4) of the High Court (Admiralty Jurisdiction) Act (Cap. 6)) the affidavit leading to the warrant of arrest "must state whether the ship against which the action is brought is the ship in connection with which the claim in action arose" (emphasis mine). No such averment appears in Mr. Looi's affidavit in relation to any claim regarding any ship other than the "Suhaili."

C This affidavit led to the warrant and the "Suhaili" was arrested that day. By a telex dated July 2, 1986 in response to the defendants' inquiry on security for release of the vessel, the plaintiffs' solicitors asked for payment into court of \$1,584,530.74 made up of:

	\$
Claim	1,050,358.62
Interest at 12% per annum for four years	504,172.12
Costs	30,000.00

E (In passing, it may be noted that the claim has increased from \$1,048,511.77 in the indorsement to \$1,050,358.62 in the demand for security. Even at this stage, the plaintiffs asked for security in excess of their legal rights.)

F In reply, on July 4, 1986, the defendants' solicitors wrote offering a bank guarantee for the whole sum demanded by the plaintiffs' solicitors. This offer was, on the very same day, totally rejected by the plaintiffs' solicitors who reiterated their requirement of payment into court of \$1,584,530.74. The defendants' solicitors had in their letter offering a guarantee also asked the plaintiffs' solicitors if they had any specimen guarantee in mind; if not, they were prepared to use the form they currently used, a copy of which they sent to the plaintiffs' solicitors.

H The defendants thereupon applied by motion for the release of the "Suhaili" upon the defendants providing security in the form of a bank guarantee, a specimen of which was annexed to the notice of motion.

I The motion came on for hearing on July 11, 1986 before Abdul Wahab Ghows J. who made an order in terms of the motion paper. Pursuant to this order, a guarantee dated July 17, 1986 was duly furnished and the "Suhaili" was released on July 18, 1986. The guarantee was provided by

Banque Indosuez who, incidentally, are also the plaintiffs' bankers or one of them.

The plaintiffs filed their statement of claim on July 21, 1986. There is no mention of the declaration that they are entitled to a possessory lien and they are deemed to have abandoned this cause of action on the authority of *Cargill v. Bower*⁽¹⁾ at p. 508 and *Lewis v. Durnford*⁽²⁾ at p. 65. The plaintiffs also reduced their money claim from \$1,048,511.77 in the general indorsement to \$1,000,358.62. On August 6, 1986, the plaintiffs filed an amended statement of claim where the total sum claimed was increased to \$1,050,358.62, a figure which now matched that in their telex of July 2, 1986 on security.

On September 19, 1986, the defendants filed a motion asking that the security provided by the bank guarantee dated July 17, 1986 (pursuant to the order of of Abdul Wahab Ghows J.) be cancelled or reduced in amount. This motion came on for hearing before me on October 30 & 31, 1986. I made certain orders. Prior to the extraction of order made on October 31, 1986, the matter came before me again on November 7, 1986 on the request of the plaintiffs who sought a variation of the order and some clarification of it. After hearing the parties and realizing there were some errors in my order of October 31, 1986, I varied my order of October 31, 1986, in effect cancelling the guarantee. I also ordered its return to the defendants.

When the matter first came before me on October 30, 1986, Mr. Looi took a preliminary objection that the court had no jurisdiction to hear any application to vary the sum guaranteed or to cancel the guarantee. His objection was that a court had no initial jurisdiction to order a guarantee as a preliminary to the release of the vessel. Such release, he argued, could only have taken place on payment into court or on a bail bond under RSC Order 70 rule 23 and Order 70 rule 15 respectively. He further argued that a guarantee was "a purely private matter."

Our Rules are based on the English RSC and the two rules referred to above correspond respectively to the English RSC Order 75 rule 24 and Order 70 rule 16. Notwithstanding the lack of provision for guarantees in the Rules, guarantees are a common form of security in admiralty cases. This is illustrated by passages set out below from textbooks and the current *Supreme Court Practice*:

A "A guarantee by a bank or insurance company or other suitable company or corporation may be agreed upon, guaranteeing payment of any sum which may be held to be due to the plaintiff or may be agreed by the parties following a settlement. Such a guarantee is purely private and has nothing to do with the court. (*British Shipping Laws*, Vol. 1, Admiralty Practice.)

B The usual step following an appearance in an action *in rem* is for the owner of the property arrested to procure its release by giving security for the plaintiff's claim. This may be done either by paying the amount of the plaintiff's claim into court, or by providing bail in a sufficient amount, or by furnishing a guarantee acceptable to the plaintiff. The third method is nowadays the most common in practice.

C (*Halsbury's Laws*, 4th edn., Vol. 1, para 377.)

A guarantee or undertaking by a bank, insurance company, protection and indemnity association, or other guarantor satisfactory to the claimant, to pay any amount found to be due by the defendant and not paid by him is, in practice, usually accepted in lieu of bail or payment into court. The terms of such a guarantee are agreed between the parties and no formal procedure is involved. Since the guarantor gives no undertaking to the court, enforcement of his liability could only be by way of a substantive action upon the contract of guarantee. In other respects, the effect of acceptance of a guarantee appears to be the same as the effect of giving bail. (*Halsbury's Laws*, 4th edn., Vol. 1, para. 383.)

E Bail, or payment into court in lieu of bail, is rare, for in almost all cases the arresting party is satisfied with a guarantee or undertaking given out of court, e.g. a bank or insurance company, although it seems an arresting party is entitled to insist on bail or payment into court. (*The Supreme Court Practice*, 1985, p. 1089 ¶ 75/13/2.)"

F When the author of *British Shipping Laws* says "a guarantee ... has nothing to do with the court," I take him to mean what is said in *Halsbury's Laws* (para. 383), i.e. the need for a separate substantive action to enforce the guarantee.

G Except for the reference to *British Shipping Laws*, Mr. Looi cited no authority whatsoever in support of his objection to jurisdiction.

H In the light of what is said in *Halsbury's Laws* and the *White Book*, I can only take it that when a suitably worded guarantee by a sound bank or insurance company is offered by the owner of an arrested ship, the plaintiff's solicitors invariably accept it. They no doubt take into consideration the inevitable fact that no such bank or insurance company will furnish a guarantee unless it itself is sufficiently secured by or feels secure with regard to the defendant. I will go so far as to think that the guarantees of the type mentioned are universal in England today; so much so that *Atkin's Court Forms* on Admiralty provide precedents for such a guarantee.

I am also of the view that refusal of a suitably worded guarantee from a sound financial institution and insistence on payment into court or a bail bond is oppressive conduct on a plaintiff's part constituting an abuse of process of court which the court has an inherent jurisdiction to prevent. Therefore, a guarantee (subject to the stipulations I have stated) offered by a defendant should promptly be accepted by a plaintiff who has caused the arrest of a ship. In such a case, a plaintiff should not insist on payment into court or a bail bond. In coming to the conclusions expressed, I have drawn heavily, both for substance and phraseology, from the judgments, quoted hereafter, of Brandon J., now Lord Brandon of Oakbrook.

There is another ground on which the plaintiffs have no basis for objection to jurisdiction. As he did before me, Mr. Looi represented the plaintiffs at the hearing before Abdul Wahab Ghows J. of the defendants' application, resulting in the order for provision of security by way of a bank guarantee.

If the plaintiffs' case is that the court has no jurisdiction to order a guarantee in lieu of payment into court or a bail bond, the plaintiffs should have appealed against that order of Abdul Wahab Ghows J. Not having done so, it ill behoves them on the application before me to say that Abdul Wahab Ghows J. had no jurisdiction to order a guarantee and consequently I have no jurisdiction to vary his order or cancel it. By not appealing against the order of Abdul Wahab Ghows J., the plaintiffs have, so to say, invested the court with jurisdiction to make the order and, consequently, to vary it.

Further, Mr. Looi, in reply to my question, said the plaintiffs "will enforce the guarantee when (*sic*) judgment is given" in their favour. In my view, they cannot blow hot and cold; they cannot say Abdul Wahab Ghows J. had no jurisdiction to order a guarantee and in the same breath say:

- (a) they will take advantage of his order so long as it is in their favour; but
- (b) they object to the court varying that order even if good grounds can be shown by the defendants for its variation.

In *The Moschanthy*,⁽³⁾ the arrested vessel, to quote Brandon J., "was released against a security

A of £35,000 given by agreement in the form of a bank guarantee." (See first full paragraph on p. 40) The defendants applied to Brandon J. for a variation by reduction of the sum secured. The learned judge heard this application on its merits. If a court can entertain such an application, the guarantee being one by agreement between the parties, and hear it on its merits, there is much stronger ground for holding that a court has jurisdiction to entertain such an application where the guarantee was furnished pursuant to an order of court.

C In coming to my decision, I fully appreciate that there are cases where the courts have declined to vary or release the security provided by a bank guarantee. They are *The Hoe Lee*⁽⁴⁾ at p. 49 ("the security was a matter negotiated out of court by the parties"), *The Alletta*⁽⁵⁾ at p. 50 ("a security not given to the court"), and *The Ling Yung*⁽⁶⁾ at p. 219 ("security ... furnished by private agreement"). In each of these cases, the court had nothing to do with the original provision of the guarantee by the defendant ship-owners and they were properly described as "purely private." A matter to note is that in *The Alletta*⁽⁴⁾ no reference was made to the earlier case of *The Moschanthy*.⁽³⁾

F On the other hand, in *The Moschanthy*,⁽³⁾ Brandon J. clearly thought he had jurisdiction to entertain the application to vary the guarantee provided out of court. That he did not vary the guarantee on the facts of that particular case is neither here nor there on the question of jurisdiction.

G In contrast to all these four cases, in the instant case, the guarantee, while not to the court, was the consequence of an order of court or as I said during the hearing was one "embodied in an order of court." For the reasons stated, the plaintiffs' objections to the court's jurisdiction have, in this case, no basis whatsoever in law and I had no hesitation in dismissing it.

I Before considering the facts material to quantum of security, it is appropriate that I set out the principles governing this question. The only two cases I can find in which the principles are set out are decisions of Brandon J. in exercise of admiralty jurisdiction of the High Court in England.

I have briefly referred to *The Moschanthy*.⁽³⁾ The facts material for present purposes are that the plaintiffs had alternative claims in detainment and

in contract. The detainee claim was in the order of £41,000 and the alternative contract claim was for about £35,000. The vessel was released against a security of £35,000 given, as I have said above, by agreement in the form of a bank guarantee. The plaintiffs' solicitors had originally asked for security of £40,000 but later agreed to accept £35,000.

A number of matters came before Brandon J. by way of motion and one was that the security was excessive and should be reduced. After hearing the parties and on the facts before him, Brandon J. did not think that the security of £35,000 was shown to be excessive. On security for the release of an arrested ship in actions *in rem*, Brandon J. said:

"It seems to me that the power to exact security in support of a claim *in rem* is a very strong power and it must not be used oppressively.

Where there is a genuine dispute or discussion about the appropriate amount of security in a case, the plaintiff ought to put his cards fairly on the table and explain to the defendant or his solicitors the grounds upon which he claims to exercise this strong power. In this case I am not satisfied that the plaintiff or his solicitors did put their cards on the table with regard to amount. Indeed, I felt that they had to be extracted one by one from his counsel during the hearing of the motion. (Page 46, column 2, foot.)"

The other case is *The Polo II*,⁽⁷⁾ also a decision of Brandon J. The plaintiffs in this action claimed £17,913.74p in an *in rem* action as damages for breach of contract relating to the use and/or hire of the "Polo II." The precise amount of security originally demanded by the plaintiffs is not clear from the report. The defendants by motion asked, *inter alia*, for a declaration "that the amount of security demanded by the plaintiffs for that claim is excessive and unreasonable and should be reduced"; and that the court "do declare the amount of security for their claim, interest and costs which the plaintiffs are entitled to demand upon the basis of their reasonably arguable best case."

By a letter written after the motion was filed but before its hearing, the defendants' solicitors wrote to the plaintiffs' solicitors stating that the sum of £19,000 asked for by the plaintiffs as security was exaggerated and unreasonable and that it should be reduced to a reasonable figure of, say, £6,000. When the matter came on for hearing before Brandon J., he referred to the Admiralty Registrar for determination of the amount of security to be given by the defendants to obtain the release

A of "Polo II." The Registrar found that the proper amount of security was £13,574 and ordered plaintiffs to pay the defendants' costs in any event.

B The plaintiffs then took out a motion, *inter alia*, to appeal against the Registrar's order on costs.

C Dealing comprehensively with a plaintiff's duties on the quantum for security demanded, Brandon J. started with a reference to *The Moschany*.⁽³⁾ For ease of reference and citation of what the learned judge said, I take the liberty to put in numbered sub-paragraphs (which are not in the report) the lengthy passage from *The Polo II*⁽⁷⁾ that I quote. The quotation is almost the whole of p. 119. Brandon J. said:

D "1. I took the view in [*The Moschany*] that the court had power to control the amount of security demanded by a plaintiff in an action *in rem* and that the control should be exercised to demand such an amount as security as would cover his reasonably best arguable case, that is to say cover the amount of the claim, the amount of any interest that might be recoverable and for the amount of any costs. And I took the view that the power of the court to control security in that way was derived from the inherent jurisdiction of the court to prevent any abuse of the process of the court, or the use of court procedure in an oppressive way.

E 2. As I pointed out in that case the power to arrest a ship is a very drastic power. And the power to insist that she remain under arrest unless security of a certain amount is given is equally a drastic power, and my view, which I expressed in *The Moschany* and which I repeat now, is that that power must not be exercised oppressively, and if it is exercised oppressively then the court can and should interfere to prevent conduct of that kind. At the same time the court must make sure that the plaintiff is not left without sufficient security to cover his reasonably best arguable case.

G 3. On that view of the law, when security demanded by plaintiffs in an action *in rem* is challenged by the defendants, the question for decision by the court is whether the demand is excessive, and therefore oppressive, or not. That is the issue which is raised before the court for its determination. It is for the plaintiffs to put a figure on the amount of security which they require. It is not for the defendants to do so. It is the plaintiffs who know what the details of their claim are, what facts the claim is based on and what the extent of the claim is on the best arguable case. It is impossible for the defendants at this stage of the proceedings to have anything like the knowledge about the plaintiffs' claim which the plaintiffs have.

H I 4. As I mentioned in reciting the history of this case a statement of claim was delivered which helped to explain the plaintiffs' claim, but in the ordinary way at the stage when discussion about security is going on it is the plaintiffs who know all about their case and the defendants who know very little, and therefore it cannot be said that the defend-

ants are in any sense in an equal position to determine what is the right amount of security with the plaintiffs.

5. I indicated in *The Moschanthy* that, when a dispute of this kind arises, it is desirable that the plaintiffs should put their cards on the table and explain to the defendants on what basis it is that they are asking for the amount for which they are asking; and if they do that and if they provide the defendants with all necessary information, then the knowledge of the parties may become more equal as a result of such process.

6. It may be that, when the defendants have been sufficiently informed about the nature and basis of the plaintiffs' claim, they will be in a position to make an assessment themselves of what the amount should be. Even so I cannot see that the defendants are under any obligation in law to make a counter-offer. They can of course do so, and if they do so it is part of their conduct leading up to the proceedings, and the fact of the offer and the amount of the offer are relevant circumstances in the history of the case when the question of exercising discretion on costs comes to be considered.

7. I do not say for a moment that it may not be reasonable to consider, when exercising the discretion on costs, firstly whether the defendants have made an offer, and secondly what its amount was. But in considering what weight should be attached to these matters, much must depend upon the extent to which the plaintiffs' cards were laid on the table.

8. These are matters which the tribunal of first instance, exercising its discretion, is entitled to go into on such material as is placed before it by the parties. But to say that the making of an offer and its amount are material to the exercise of the discretion is quite different from saying that the making of the counter-offer alters in some way the issue which is before the court. In my judgment it does not do anything of the kind.

9. The issue remains the same as it always was, namely whether the plaintiffs' demand was excessive and oppressive. The issue does not become is the plaintiffs' figure right or is the defendants' figure right. The question remains have these plaintiffs, in exercising the powers which a plaintiff *in rem* has acted oppressively by asking too much; and should they therefore be controlled by the court. That is the question which has to be decided, whether a counter-offer is made or not, and whatever its amount."

In making his case, Mr. Suppiah stated that when his application was before Abdul Wahab Ghows J. and when the guarantee was given, the statement of claim had not been filed. All he had to go by was the figure claimed in the writ. He had no details or particulars of the claim. The defendants then could only speculate on the items covered by the sum in the indorsement. When the matter came before me on October 30, 1986, he had the amended statement of claim, of which paragraph 4 specified particulars of the plaintiffs' claims. He was critical of items in the particulars.

A Rather than deal with Mr. Suppiah's objections in the sequence in which the relevant items appeared in the particulars, I will group the objections in categories under the principles of law applicable to each. The groups are:

B A. claims not related to the "Suhaili" but to a sister ship;

B. claims not properly subject of an admiralty *in rem* action;

C C. claims where the cause of action had not arisen at the date of the issue of the writ;

D. payments made or appropriated to work relating to the "Suhaili."

D I fully appreciate that the claims of the plaintiffs were not for final determination before me. What I had to do was, on the plaintiffs' "reasonably arguable best case," to see whether or not any part of the plaintiffs' claim fell within one or more of the categories I have set out above. That was the limit of my task and if in carrying out that task, a specific part of the plaintiffs' claim on their reasonably arguable best case fell within one of the specified categories, it clearly was not an item on which the defendants should be called upon to provide security.

F In this context, the words of Brandon J. should be recalled. The plaintiffs must not act oppressively. They must put all their cards on the table. They must appreciate that where, at issue of the writ, they have all the necessary information on the details of their claim while the defendants know very little or are in the dark. It is for the plaintiffs to put a figure on the amount of security they require and not for the defendants to make an offer or counter-offer.

H On these principles, there is nothing against the defendants in their having accepted the figure demanded by the plaintiffs in their letter of July 2, 1986. As the plaintiffs laid more and more cards on the table, the defendants may well have realized that the quantum of security demanded and initially given was excessive. On my view of the facts, that is what precisely happened here.

I After the first morning's hearing, I drew the attention of both counsel to *The Polo II*⁽⁷⁾ and read out page 119 of the report to them. I invited them to get together, go through the figures in

the light of the words of Brandon J. removing items not properly in this *in rem* action commenced on July 1, 1986 and exclusively relating to the "Suhaili" and come back to me, if possible for a consent order. This was not done and at the next day's hearing Mr. Looi told me in effect that having consulted the partner in his office in dealing with this matter, he could not do anything which will lead to a consent order.

Before me on October 31, 1986, the pleading with particulars of the plaintiffs' claim was the amended statement of claim. The amended particulars in paragraph 4 read:

Date	Description	Amount (\$\$)
25/6/86	Invoice No. 013-86	166,128.35
28/6/86	Invoice No. 012-86	5,739.29
30/6/86	Invoice No. 014-86	1,200,000.00
30/6/86	Overseas calls and telex charges (estimated for June 1986)	5,500.00
		1,377,367.64
	Less credit notes and moneys received on account	327,330.66
		<u>1,050,358.62</u>

That morning, Mr. Looi also brought a statement of account with him which, by complicated accounting, in effect reduced the claim from \$1,050,358.62 to \$669,552.30. I will now deal with the various elements in the plaintiffs' claim to examine if any of them come within the categories specified.

Category A. This is an *in rem* action and the general indorsement only refers to work done on the "Suhaili." There is no mention of any sister ship. The affidavit leading to the arrest of the vessel makes no mention of the "Sirocco," a sister ship of the "Suhaili."

Mr. Looi in the course of argument during the first day's hearing said that nothing was owing in respect of the "Sirocco." He contradicted this the next day when he said:

"I can amend indorsement and statement of claim to include [a] claim for [the] sister ship. Can I then ask for increase in sum guaranteed to be raised if court reduces it today?"

The reduced claim of \$669,552.30 was apparently arrived at by exclusion of items relating to the "Sirocco" and payments which the plaintiffs claimed they can appropriate for work done on the "Sirocco." This was a drastic reversal from

A Mr. Looi's assertion the previous day that the entire claim of more than \$1 million related to work on the "Suhaili" alone. In effect, Mr. Looi was saying that the security requested for the claim of \$1,050,358.62 was grossly excessive and that he should have asked only for security for a claim of \$669,552.30. I therefore used this figure as my starting point.

Paragraph 4 of the statement of claim included a figure for \$166,128.25. This figure also appeared in the account handed to me that morning. From the documents exhibited to the affidavit, it was clear that this sum related to work on the "Sirocco" and had no legal basis to be part of claim in an *in rem* action relating exclusively to the "Suhaili." I therefore decided even on the plaintiffs' reasonably arguable best case that the sum should be excluded from the security demanded and provided in this action.

Category B. The nature of claims that can be brought in an *in rem* action is restricted to the claims mentioned in the applicable paragraphs of section 3(1) of the High Court (Admiralty Jurisdiction) Act. The applicable paragraph in this case is paragraph (m) which refers to claims in respect of the construction, repair or equipment of a ship. There were two items in paragraph 4 of the statement of claim which have no place in an *in rem* action. In an effort to bring these items into the claim in this action, the plaintiffs worded paragraph 3 of the statement of claim apparently to include this element – the plaintiffs "incurred expense for and on behalf of the defendants." These words have no place in an *in rem* action and the items to which they relate are:

\$		
5,739.29	being May and May/June 1986 rental charges for a photocopier, telephone, overseas telephone charges, telex charges and 20% of the said charges and government tax.	
5,500.00	being estimated overseas calls and telex charges for June 1986.	
<u>11,239.29</u>		

The defendants may well be liable for these charges in another cause of action. These charges are in the nature of hire charges, disbursements to third parties made by the plaintiffs in what appears to be a service to the defendants. They are not claims in respect of the construction, repair or equipment of the "Suhaili"; nor can they come under any other relevant paragraph of section

3(1) as to found a cause of action in an *in rem* action. I therefore held that even on the plaintiffs' reasonably arguable best case, this \$11,239.29 was not a sum for the defendants could be called upon to provide security.

Category C. It is an elementary principle of law that when a plaintiff sues, the cause of action on which he sues must exist at the date of the issue of the writ.

The contract between the parties expressly provided for the defendants to pay \$500,000 (out of the total contract figure of \$1,200,000) on September 1, 1986. There is no provision in the contract that on the happening or non-happening of a certain event, all sums, whether due or not, shall immediately become due and payable. It is a simple proposition that leads solicitors to insert into instalment contracts a provision on the lines of "Upon the failure of the buyer to pay any instalment on the due date, the entire balance of the purchase price then remaining unpaid shall fall due and become immediately payable."

There is no such or similar term in the agreement between the parties and regardless of the trigger event on which the plaintiffs attempt to rely for this purpose, there was no cause of action for the \$500,000 until after September 1, 1986.

Mr. Looi relied on *The Tergeste*⁽⁸⁾ for his proposition that if a shipbuilder is deprived of his possessory lien, he can cancel all credit and thereupon become entitled to the whole contract sum. The passage he relied upon from the judgment of Phillimore J. is at p. 34 and reads:

"A man who contracts to do a long costly piece of work does not contract, unless he expressly says so, that he will do all the work, standing out of pocket until he is paid at the end. He is entitled to say, 'That is not my contract; it is quite true that I had contracted to do the work and I am bound to do it; but there is an understanding all along that you are to give me from time to time, at reasonable times, payments for work done, and if the contract here was to do certain work, it always included that term, to do it if we are paid reasonable sums in part payment as we go along, not an advance, but in part payment for work already done before we proceed to the next thing'; and if that payment is not made, then the shipwright, or any other artificer, is entitled to review his work, and say, 'I have done work worth so much; true I have contracted to do other work, but it is not reasonable I should do it as I have not been paid, and in respect of work I have done I claim payment'."

What this case decides is that in the absence of an express provision on progress payments, an

A implied term can be read into contracts for long costly pieces of work whereby the party doing the work is entitled to receive at reasonable intervals payment for work already done as part payment of the whole contract sum; further, if he is not so paid he is entitled to stop work till he is paid, not that he can immediately claim sums not yet contractually due.

In the present case, there is express provision for payments of specific sums at specific dates or events. With such express provision, no implied term of the type Phillimore J. had in mind can be imported. Therefore, this case is of no assistance to the plaintiffs. They are bound by the express terms of their contract and cannot possibly, under clause 3 of their agreement, have a claim for the \$500,000 (less any deductions under clause 5) until after September 1, 1986.

I held therefore that on the reasonably arguable best case for the plaintiffs, the \$500,000 should not form part of the sum secured. This sum should be deducted from the \$1,200,000 claimed in paragraph 4 of the amended statement of claim and should be deducted from the guaranteed sum.

In view of my holding and the law on which it is based, it is unnecessary for me to make a finding whether the plaintiffs' possessory lien was continuous and unbroken, whether they were deprived of it and if so, whether rightly or wrongly. I deliberately refrain from making a finding on any of these elements.

Category D. There was a dispute between the parties on payments. Mr. Looi claimed the plaintiffs could appropriate payments received from the defendants at their option either to work done on the "Sirocco" or on the "Suhaili." Mr. Suppiah's contention was that where the defendants made a payment and the plaintiffs issued a receipt expressly stating it was for work on the "Suhaili" or on "Project 6" (another name for work on the "Suhaili"), it was express appropriation towards sums due or to be due in respect of work on the "Suhaili."

I A creditor is irrevocably bound by his appropriation of a payment to a specific debt which appropriation he has communicated to the debtor. (See *Halsbury's Laws*, 4th edn., Vol. 9, paragraph 506 and *Chitty on Contract*, 25th edn., paragraph 1424.) The precise point was, in wider terms, stated by the Judicial Committee of the

Privy Council in *Sheikh Mahomed Jan v. Mushi Ganga Bishun Singh*⁽⁹⁾:

"The money in question in the present case was expressly paid to satisfy the January kist [revenue dues], and it was received and acknowledged on that account. It requires no statutory provision to shew that, when money has been so paid and received and appropriated, it is not in the power of one of the parties to the transaction, without the assent of the other, to vary the effect of the transaction by altering the appropriation in which both originally concurred (p. 84)."

The plaintiffs before me cannot seek to appropriate for sums allegedly due on the "Sirocco," payments for which they issued receipts signed by a director stating specifically that the money received was 'part payment for modifications of "Suhaili"' or "Project 6". The receipts were express and specific representations to the defendants. Any claimed errors on the plaintiffs' part are immaterial. There was therefore express appropriation conveyed as such by the plaintiffs to the defendants. This type of appropriation is irrevocable. It can be altered only with the assent of the defendants. No such assent was alleged.

It is unnecessary for me to go into the specific sums under this category as the sums I hold should not be the subject of security under the categories dealt with earlier exceed the \$669,552.30, the sum to which Mr. Looi reduced, on October 31, 1986, the plaintiffs' claim for security.

It is also unnecessary for me to deal with other items in dispute between the parties as during argument Mr. Looi's stand changed a number of times from challenge to concession.

For the reasons stated, the sums which I hold should not form part of the sum secured in this *in rem* action are:

Category	Sum (\$)
A	166,128.25
B	11,239.29
C	500,000.00
Total:	<u>677,367.54</u>

As this total exceeds the amended sum of \$669,552.30 which the plaintiffs claimed justified security, there was no warrant for security and at the hearing on November 7, 1986 for recall of my earlier order at the plaintiffs' request, I cancelled the guarantee, released the guaranteeing bank from their obligations under the guarantee and

ordered its return to the defendants. I also made certain consequential orders on the defendants' expenses in servicing the guarantee.

In reiterating what I said about my duty in the application before me, I emphasize that I make no final determination on whether the sums in question are due from the defendants to the plaintiffs. They may well be in an action brought at the proper time with pleadings formulated differently.

On October 31, 1986, Mr. Looi applied for a stay for the order that I made that day. I dismissed it and gave my reasons for doing so. After my order of November 7, 1986, Mr. Looi made no application for a stay.

Mr. Suppiah's motion asked for costs in the cause. At the end of the hearing, neither side addressed me on costs and I made an order in terms of the motion.

Before I conclude, it is perhaps appropriate for me to return to the question of jurisdiction. If the plaintiffs had accepted the defendants' offer of a guarantee contained in the solicitors' letter, it would then have been a "purely private" matter and on the authorities it may well be that I had no jurisdiction to vary the sum guaranteed. One question arises in my mind. If I am justified in removing the sums or any sum that I did from the security, what remedy will a defendant have if he cannot come to court to seek a variation in the sum guaranteed in a purely private arrangement?

COURT OF APPEAL.

Lawrence Boo and *Mark Looi* for the appellants.

P. Suppiah for the respondents.

Wee Chong Jin C.J. (delivering the judgment of the court): This was an appeal by the plaintiffs/appellants against an order of the High Court discharging the guarantee furnished by the defendants/respondents as security for the release of their vessel, the "Suhaili 5201", which the appellants had earlier arrested.

The facts have been complicated by the several amendments which the appellants made to their statement of claim at various stages of the proceedings and it would perhaps be useful to first set out these facts in some detail.

On July 1, 1986, the appellants commenced these proceedings against the respondents. In their indorsement of claim, the appellants prayed for a declaration that they were entitled to their possessory lien of the "Suhaili 5201" and for the sum of \$1,048,511.77 in respect of modifications carried out to the same vessel at the respondents' request. The appellants arrested the "Suhaili 5201" on the same day. The affidavit leading to the warrant of arrest stated, *inter alia*, that the "Suhaili 5201" was the vessel in connection with which the claim for the \$1,048,511.77 arose.

On July 4, 1986, the respondents entered unconditional appearance. In response to the respondents' enquiry on security for release of the vessel, the appellants asked for payment into court of \$1,584,530.74 made up of:

Claim	\$1,050,358.62
Interest at 12% p.a. for 4 years	\$ 504,172.12
Costs	\$ 30,000.00
	\$1,584,530.74

It will be noted that the sum of \$1,050,358.62 claimed was more than the amount as stated in the indorsement of claim.

The respondents offered a bank guarantee for the said sum of \$1,584,530.74 but the appellants insisted on the money being paid into court. The respondents then applied for and on July 11, 1986 obtained an order of court for the release of the "Suhaili 5201" upon the respondents providing security in the form of a bank guarantee for \$1,584,530.74, without having to pay the money into court.

On July 17, 1986, a guarantee by Banque Indosuez for \$1,584,530.74 was furnished by the respondents whereupon on July 18, 1986, the "Suhaili 5201" was released.

On July 21, 1986, the appellants filed their statement of claim. In this statement of claim, the appellants abandoned their claim for the declaration that they were entitled to a possessory lien. The appellants also reduced their claim from \$1,048,511.77 in the general indorsement to \$1,000,358.62 particulars of which were as follows:

A Invoice No. 013-86	\$ 166,128.35
Invoice No. 012-86	\$ 5,739.29
Invoice No. 014-86	\$1,200,000.00
Overseas calls and telex charges (estimate)	\$ 5,500.00
B	\$1,377,367.64
Less: credit notes and moneys received on account	\$ 377,330.66
	\$1,000,358.62

C On August 7, 1986, the appellants filed an amended statement of claim in which the total claim was increased from \$1,000,358.62 to \$1,050,358.62 to correspond with the figure in respect of which security had been asked for and D furnished. This was done by reducing the receipts of \$377,330.66 in the particulars above to \$327,330.66.

On September 19, 1986, the respondents applied by way of motion for an order that the guarantee provided for the release of the "Suhaili 5201" in the sum of \$1,584,530.74 be cancelled or reduced. E

At the hearing of the motion before the learned High Court judge, counsel for the appellants argued, firstly, that the court had no jurisdiction to reduce or cancel the guarantee as the guarantee amounted to a private arrangement between the parties and was therefore different from bail furnished under the Rules of Supreme Court. Secondly, in respect of the amount of security to be provided, counsel for the appellants informed the learned judge that the figures in the amended statement of claim were wrong and that the appellants were reducing their claim from \$1,050,358.62 as stated in the amended statement of claim to \$669,552.30. G

H The appellants arrived at this figure of \$669,552.30 as follows. It transpired that the appellants had done work for the respondents in respect of two ships: the "Suhaili 5201" and the "Sirocco." According to the appellants' invoices, the total amount in respect of both ships came up to \$2,006,349.82. This figure was the sum total of eight invoices: I

(a) In respect of "Suhaili 5201":	
Invoice No. 012-86 for	\$ 5,739.29
Invoice No. 013-86 for	\$ 166,449.99
Invoice No. 014-86 for	\$1,200,000.00
Invoice No. 018-86 for	\$ 3,341.60
	\$1,375,530.88

(b) In respect of the "Sirocco":

Invoice No. 008-86 for	\$ 450,000.00
Invoice No. 009-86 for	\$ 3,946.59
Invoice No. 010-86 for	\$ 166,128.35
Invoice No. 011-86 for	\$ 10,744.00
	<u>\$ 630,818.94</u>
	<u>\$2,006,349.82</u>

The appellants admitted receipt of a total sum of \$1,336,797.52. Therefore, the appellants alleged there was an outstanding balance of \$669,552.30 due.

The learned judge rejected the appellants' first contention and held that the court had jurisdiction in this case to vary the amount of the guarantee furnished by the respondents. The learned judge referred to *The Hoe Lee*⁽⁴⁾, *The Alletta*⁽⁵⁾ and *The Ling Yung*⁽⁶⁾ where, in each of those cases, the security furnished by way of a banker's guarantee was a private arrangement between the parties and not a security given to the court unlike bail. The learned judge distinguished these cases on the ground that in each of these cases the court had nothing to do with the original provision of the guarantee and they were thus properly described as "purely private." In contrast, in the present case, the guarantee was embodied in an order of court.

With regard to the amount of security that should be given, the learned judge followed the principles broadly laid down by Brandon J. (as he then was) in *The Moschanty*⁽³⁾ and *Polo II*.⁽⁷⁾ He then considered in detail the various sums claimed by the appellants. He took the view that the appellants could not include claims in respect of the "Sirocco." The learned judge therefore deducted from the balance of \$669,552.30 claimed by the appellants, the sums of \$3,946.59 (Invoice No. 009-86), \$166,128.35 (Invoice No. 010-86) and \$10,744.00 (Invoice No. 011-86) all of which related to claims in respect of the "Sirocco." As for the sum of \$450,000 (Invoice No. 008-86), also in respect of the "Sirocco", the respondents conceded that of the sum of \$1,333,797.52 received by the appellants, \$450,000 was payment for this invoice. Therefore, this \$450,000 need not have to be deducted again from the appellants' claim.

In addition, the learned judge deducted the sum of \$5,739.29 in Invoice No. 012-86 and \$500,000 from Invoice No. 014-86. The sum of \$5,739.29 which was for telexes and telephone charges was deducted as the judge felt it could not come within an *in rem* claim. The sum of \$500,000.00 was deducted as the judge was of the

A view that it was not yet due on the day the writ was issued.

As the total deducted by the learned judge amounted to \$686,558.23 and thus exceeded the appellants' claim of \$669,552.30, the learned judge came to the conclusion that there was no longer any justification for any security and accordingly the guarantee was cancelled. It must at this stage be emphasized that this whole exercise by the learned judge was carried out on the basis of the figures given to the learned judge at the hearing of the motion, and not on the figures stated in the amended statement of claim.

The appellants filed the present appeal which was argued before us. Before this appeal came up for hearing, the appellants filed a re-amended statement of claim dated February 20, 1987. In the re-amended statement of claim, the appellants claimed as against the "Suhaili 5201" the sum of \$669,552.30 made up as follows:

Invoice No. 013-86	\$ 166,449.99
Invoice No. 012-86	\$ 5,739.29
Invoice No. 014-86	\$1,200,000.00
Invoice No. 018-86	\$ 3,341.60
	<u>\$1,375,530.88</u>
Less Credit Notes and moneys received on account	\$ 705,978.58
	<u>\$ 669,552.30</u>

Further, the appellants added a claim against the "Sirocco" for the sum of \$180,818.94 made up as follows:

Invoice No. 008-86	\$450,000.00
Invoice No. 009-86	\$ 3,946.59
Invoice No. 010-86	\$166,128.35
Invoice No. 011-86	\$ 10,744.00
	<u>\$630,818.94</u>
Less Moneys received on account	\$450,000.00
	<u>\$180,818.94</u>

Before us, counsel for the appellants conceded, during the course of arguments, two matters. Firstly, counsel for the appellants conceded that

the court had jurisdiction to vary the amount of the security to be provided. In this respect, we would merely add that we have no doubt whatsoever that there was jurisdiction to moderate the amount of the security in this case. In our judgment, whilst the court may have no jurisdiction to vary the method of giving security agreed to between the parties, the court's power to control the amount of security in actions *in rem* is not ousted by the mere fact that the amount of security had originally been agreed to (see *The Moschany*,⁽³⁾ *The Polo II*,⁽⁷⁾ and *The Ling Yung*⁽⁶⁾ at p. 218). All too often, the owners of a vessel that has been arrested have no choice but to furnish security to the plaintiffs' satisfaction if they want the vessel released fast. In doing so, the owners are often in no position to assess what the amount of security should be until sufficient information as to the plaintiffs' claim is furnished. In these circumstances, it seems to us an unacceptable proposition to say that the court has jurisdiction to moderate the security sum where security is furnished by way of bail but not where the method of giving security has been agreed to and is not by way of bail. The inherent jurisdiction of the court to prevent plaintiffs from acting oppressively and abusing the process of the court by demanding excessive security must equally apply in either case.

The second concession made by counsel for the appellants related to the figures in the re-amended statement of claim. Counsel for the respondents pointed out that the amount credited to the respondents in the re-amended statement of claim was less than the amount the appellants had admitted receipt of before the High Court. It will be remembered that before the High Court the appellants had admitted receipt of a total of \$1,336,797.52. However the total received as stated in the re-amended statement of claim amounted to only \$1,155,978.58. Before us, counsel for the appellants conceded the above and informed us that they had made an error in the re-amended statement of claim. Counsel then submitted before us that their claims remained, as before the High Court, for the final sum of \$669,552.30.

As we understood it, the appellants' claim at the end of the day was that of the total \$1,336,797.52 received by them, \$450,000 was paid towards the "Sirocco" in respect of Invoice No. 008-86 and they then appropriated another \$180,818.94 towards the balance due on the "Sirocco", thereby leaving the "Sirocco" claims fully paid for. That left the appellants with

A \$705,978.58 (*i.e.* \$1,336,797.52 less \$450,000.00 and \$180,818.940) to the respondents' credit. Deducting this figure of \$705,978.58 from the total of the "Suhaili 5201" claims would leave the appellants with the sum of \$669,552.30 as the balance unpaid in respect of the "Suhaili 5201". Therefore, counsel for the appellants submitted, there should be security furnished for \$669,552.30 plus interest and costs.

Counsel for the respondents, on the other hand, contended, firstly, that the appellants could not appropriate the additional \$180,818.94 towards the "Sirocco" claims; secondly, that with regard to the "Suhaili 5201" the claims for telex and telephone charges (Invoice Nos. 012-86 and 018-86) could not form part of an *in rem* claim; and thirdly, that with regard to the claim of \$1,200,000.00 (Invoice No. 014-86), \$500,000.00 was not yet due on the date of issuance of the writ and therefore could not form part of the appellant's claim in this action. Thus, counsel submitted, the security to be provided should not cover these sums.

It is not in dispute that on established principles of law, the appellants are entitled to sufficient security to cover the amount of their claims with interest and costs on the basis of their reasonable arguable best case: *The Moschany*.⁽³⁾ However, they are not entitled to security in respect of claims which can be described as "hopeless" and therefore not reasonably arguable.

In our judgment, in relation to the questions regarding (a) appropriation of the \$180,818.94 towards the "Sirocco" claims, and (b) the claims for telex and telephone charges which, according to the appellants, were incurred as part and parcel of the modification works to the "Suhaili 5201", the appellants have an arguable case in fact and law which ought not to be prejudged against them at this stage. Accordingly, the appellants are entitled to have these sums included in the amount of security to be furnished.

However, in respect of the appellants' claim of \$1,200,000.00 (Invoice No. 014-86), we agree with the learned judge that the appellants are not entitled to security to the extent of \$500,000.00. This particular invoice was in respect of the main contract relating to modification works on the "Suhaili 5201". The contract expressly provided for the total contract sum of \$1,200,000.00 to be paid in instalments. Pursuant to clause 3, the final instalment of \$500,000.00 was not payable until

September 1, 1986. The writ was issued on July 1, 1986 on which date no cause of action for the \$500,000.00 existed.

Counsel for the appellants submitted that as unpaid shipbuilders they had a right to retain the vessel and if such right was threatened, they would be entitled to recall credit facilities previously extended to the respondents in the form of the instalment payment terms. According to the appellants, their possessory lien was threatened when the respondents wrongfully took the "Suhaili 5201" out to sea on June 30, 1986, and they therefore withdrew all credit facilities whereupon the \$500,000.00 became immediately due despite the contractual provisions. Counsel for the appellants relied on *The Tergeste*⁽⁸⁾ at p. 34, per Phillimore J.:

"A man who contracts to do a long costly piece of work does not contract, unless he expressly says so, that he will do all the work, standing out of pocket until he is paid at the end. He is entitled to say, 'That is not my contract; it is quite true that I had contracted to do the work and I am bound to do it; but there is an understanding all along that you are to give me from time to time, at reasonable times, payments for work done, and if the contract here was to do certain work, it always included that term, to do it if we are paid reasonable sums in part payment as we go along, not an advance, but in part payment for work already done before we proceed to the next thing'; and if that payment is not made, then the shipwright, or any other artificer, is entitled to review his work, and say, 'I have done work worth so much; true I have contracted to do other work, but it is not reasonable I should do it as I have not been paid, and in respect of work I have done I claim payment'."

We agree with the learned judge that this case is of no assistance to the appellants. In *The Tergeste*⁽⁸⁾ there were no express provisions on progress payments. In the present case, there is express provision for payments of specific sums at specific dates or events. Both parties are bound by the express terms of their contract and we do not see how the appellants can bring a claim for the \$500,000.00 until after September 1, 1986. This issue is in our opinion "hopeless" in so far as the appellants are concerned.

In the premises, we concluded that the appellants were entitled to security in respect of \$169,552.30 (being the balance of their claim of \$669,552.30 less \$500,000.00) plus interest and costs. Accordingly, we allowed the appeal, set aside the order of the High Court, and reduced the amount of security furnished by the respondents to \$230,000.00. We further ordered that the respondents pay the appellants half the costs of the appeal before us. As for costs of the hearing before

A the High Court, we were of the view that we ought not, in the circumstances, to interfere with the learned judge's decision that costs before him be costs in the cause.

Appeal allowed.

B Solicitors: *Haridass, Ho & Partners; P. Suppiah & Co.*

C RE APPLICATION BY DOW JONES (ASIA) INC.

[O.C.J. (Sinnathuray J.) November 26, 1987]

[Singapore — Originating Motion No. 33 of 1987]

D *Civil Procedure — Leave to apply for certiorari and ancillary relief — Application for — Whether procedure adopted a correct one — Status of R.S.C. 1970, O. 53 — Differences with English Order 53 — Notice of motion and statement amended — Affidavit amended.*

E *Administrative Law — Leave to apply for certiorari and ancillary relief — Application for — Merits of application.*

F In this application, by way of a notice of motion, the applicants sought leave to apply for orders of certiorari and for certain other ancillary relief. The application was related to two decisions made by the Minister of Communications and Information. One of the decisions was the declaration by the Minister that the Asian Wall Street Journal was engaging in the domestic politics of Singapore. The other decision was the restriction of the sale of the Journal in Singapore to 400 copies until further notice.

G The present application was purportedly made under Order 53 of the Rules of the Supreme Court 1970. Apart from objecting to the main action, the Attorney-General also raised a preliminary objection. He objected to the manner in which the present application was brought and contended that some of the relief sought in the present application could not be made under Order 53. The applicants, however, submitted that an Order 53 application was highly appropriate for the relief sought.

H Held: (1) the English Order 53 is a very different creature from its predecessor and likewise from our Order 53;

(2) the position in Singapore is different from that of England. The procedure that applies for prerogative orders is based on the old English Order 53. There is no provision in our substantive law or rules of court relating to procedure for the court to make orders of declarations or give other ancillary reliefs in an application made under our Order 53;

I (3) the notice of motion, the statement and the affidavit were amended. Leave was also given to file an amended notice of motion, an amended statement and a fresh affidavit;